

STATE OF NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES Office of Procurement, Contracts and Grants	REQUEST FOR QUOTE NO. 30-26035-ITD	
	Offers will be publicly opened: October 7, 2025 Microsoft Teams Need help? Join the meeting now Meeting ID: 275 612 673 978 9 Passcode: gZ2e9yA7 Dial in by phone +1 984-204-1487,,822694885# United States, Raleigh Find a local number Phone conference ID: 822 694 885# Join on a video conferencing device Tenant key: ncgov@m.webex.com Video ID: 116 707 382 9	
	Issue Date: September 22, 2025	
	Refer <u>ALL</u> inquiries regarding this IFB to: Katrina Smith Katrina.Smith@dhhs.nc.gov 919-855-4085	Commodity Number: 811122 Description: GoAnywhere Software Support Using Agency: Information Technology Division
See page 2 for mailing instructions.	Requisition No.: RQ22631	

OFFER AND ACCEPTANCE

The State seeks offers for software maintenance described in this solicitation. The State’s acceptance of any offer must be demonstrated by execution of the acceptance found below and any subsequent Request for Best and Final Offer, if issued. Acceptance shall create a contract having an order of precedence as follows: In cases of conflict between documents comprising the contract, the order of precedence shall be (1) Best and Final Offers, if any, (2) special terms and conditions specific to this IFB, (3) specifications, (4) Department of Information Technology Terms and Conditions of this IFB, and (5) the agreed portions of the awarded Vendor’s offer. **No contract shall be binding on the State until an encumbrance of funds has been made for payment of the sums due under the contract.**

EXECUTION

In compliance with this Invitation for Bids, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all Services or goods upon which prices are offered, at the price(s) offered herein, within the time specified herein. By executing this offer, I certify that this offer is submitted competitively and without collusion.

Failure to execute/sign offer prior to submittal shall render offer invalid. Late offers are not acceptable.

OFFEROR:		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY, STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO
PRINT NAME & TITLE OF PERSON SIGNING:	FAX NUMBER:	
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:

Offer valid for ninety (90) days from date of offer opening unless otherwise stated here: ____ days

ACCEPTANCE OF OFFER

If any or all parts of this IFB are accepted, an authorized representative of NC Department of Health and Human Services shall affix their signature hereto. A copy of this acceptance will be forwarded to the successful vendor(s).

FOR STATE USE ONLY

Offer accepted and contract awarded this _____ day of _____, 20____, as indicated on attached certification,

by _____ (Authorized representative of NC Department of Health and Human Services).

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1.0 INTENT, USE, DURATION AND SCOPE

The purpose of this Invitation for Bid is to obtain pricing for and procure software maintenance for *GoAnywhere* software previously licensed to the NC DHHS Information Technology Division. Services will be provided in accordance to the terms and conditions of this IFB.

2.0 GENERAL INFORMATION

2.1. VENDOR QUESTIONS

All inquiries regarding the solicitation specifications or requirements are to be addressed to the contact person listed on Page One of this solicitation. Vendor contact regarding this Solicitation with anyone other than the contact person listed on Page One of this Solicitation may be grounds for rejection of said Vendor’s offer.

Written questions concerning this Solicitation will be received until September 30, 2025 at 2:00 pm Eastern Time. They must be submitted to the contact person listed on Page One of this Solicitation via Katrina.Smith@dhhs.nc.gov Please enter “Questions Solicitation 30-26035-ITD” as the subject for the message. Questions should be submitted in the following format:

REFERENCE	VENDOR QUESTION
IFB Section, Page Number	

2.2. ADDENDA

The State may issue addenda if Vendor questions are permitted as described below, or if additional terms, specifications, or other changes are necessary for this procurement. All addenda shall become an Addendum to this IFB/RFQ.

2.3. OFFER SUBMITTAL

Due Date: October 7, 2025
Time: 2:00 PM Eastern Time

IMPORTANT NOTE: It is the Vendor’s sole responsibility to upload their offer to the Ariba Sourcing Module by the specified time and date of opening. Vendor shall bear the risk for late electronic submission due to unintended or unanticipated delay, including but not limited to internet issues, network issues, local power outages, or application issues. Vendor must include all the pages of this solicitation in their response.

Sealed offers, subject to the conditions made a part hereof, will be received until **2:00pm** Eastern Time on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Offers must be submitted via the Ariba Sourcing Module with the Execution page signed and dated by an official authorized to bind the Vendor’s firm. Failure to return a signed offer shall result in disqualification.

Attempts to submit a proposal via facsimile (FAX) machine, telephone, email, email attachments, or in any hardcopy format in response to this Bid SHALL NOT be accepted and will automatically be deemed Non-Responsive.

- a) Submit **one (1) signed, original electronic offer** through the Ariba Sourcing Module.
- b) The Ariba Sourcing Module document number is: **WS1691140674**
- c) All File names should start with the Vendor name first, in order to easily determine all the files to be included as part of the vendor's response. For example, files should be named as follows: Vendor Name-your file name.
- d) File contents **SHALL NOT** be password protected, the file formats must be in .PDF, .JPEG, .DOC or .XLS format, and shall be capable of being copied to other sources. Inability by the State to open the Vendor's files may result in the Vendor's offer(s) being rejected as Non-Responsive.
- e) If the vendor's proposal contains any confidential information (as defined in Section 7.0, , Paragraph #14), then the vendor must provide one (1) signed, original electronic offer and one (1) redacted electronic copy.

For Vendor training on how to use the Ariba Sourcing Tool to view solicitations, submit questions, develop responses, upload documents, and submit offers to the State, Vendors should go to the following site: <https://eprocurement.nc.gov/training/vendor-training>

Questions or issues related to using the Ariba Sourcing Tool itself can be directed to the North Carolina eProcurement Help Desk at 888-211-7440, Option 2. Help Desk representatives are available Monday through Friday from 7:30 AM EST to 5:00 PM EST.

2.4. BASIS FOR REJECTION

Pursuant to 9 NCAC 06B.0401, the State reserves the right to reject any and all offers, in whole or in part; by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered; non-compliance with the specifications or intent of this solicitation; lack of competitiveness; error(s) in specifications or indications that revision would be advantageous to the State; cancellation or other changes in the intended project, or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the best offer; or any other determination that rejection would be in the best interest of the State. Vendor contact regarding this IFB with anyone other than Katrina Smith may be grounds for rejection of said Vendor's offer.

2.5. LATE OFFERS

Regardless of cause, late offers will not be accepted and will automatically be disqualified from further consideration. It shall be the Vendor's sole risk to ensure delivery at the designated office by the designated time. Late offers will not be opened and may be returned to the Vendor at the expense of the Vendor or destroyed if requested.

2.6. NON-RESPONSIVE OFFERS

Vendor offers will be deemed non-responsive by the State and will be rejected without further consideration or evaluation if statements such as the following are included:

- "This offer does not constitute a binding offer",
- "This offer will be valid only if this offer is selected as a finalist or in the competitive range",
- "Vendor does not commit or bind itself to any terms and conditions by this submission",

- “This document and all associated documents are non-binding and shall be used for discussion purposes only”,
- “This offer will not be binding on either party until incorporated in a definitive agreement signed by authorized representatives of both parties”, or
- A statement of similar intent.

2.7. NOTICE TO VENDORS

The State objects to and will not be required to evaluate or consider any additional terms and conditions not previously agreed to by the State and submitted with an Offeror’s response. This applies to any language appearing in or attached to the document as part of the Offeror’s response. By execution and delivery of this Invitation for Bids and response(s), the Offeror agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.

2.8. E-PROCUREMENT SOLICITATION

This is not an E-Procurement solicitation (only Services will be procured). See Section 7.0, Paragraph #33 of the attached Department of Information Technology Terms and Conditions. The Support Services Terms and Conditions made part of this solicitation contain language necessary for the implementation of North Carolina’s statewide E-Procurement initiative. It is the Vendor’s responsibility to read these terms and conditions carefully and to consider them in preparing the offer. By signature vendor acknowledges acceptance of all terms and conditions including those related to E-Procurement.

- a) General information on the E-Procurement service can be found at <http://eprocurement.nc.gov>.
- b) Within two days after notification of award of a contract, vendor must register in NC E-Procurement @ Your Service at the following web site: <https://vendor.ncgov.com/vendor/login>
- c) As of the IFB submittal date, the Vendor must be current on all E-Procurement fees. If the Vendor is not current on all E-Procurement fees, the State may disqualify the Vendor from participation in this IFB.

2.9. DISTRIBUTORS AND RESELLERS

“Resellers” as used herein, refers to businesses that routinely sell or distribute Vendor’s Products, and may include “Distributors”, “Value Added Resellers” (VARs), “Original Equipment Manufacturers” (OEMs), Channel Partners, or such other designations. These businesses must be approved by the State prior to placement of any orders. Any contract established will be subject to this solicitation and any resulting Agreement(s), and to the terms and conditions of the State’s competitive bidding process.

The Agency acknowledges that the Reseller has merely purchased the Third-Party Items for resale or license to the Agency, and that the proprietary and intellectual property rights to the Third Party Items are owned by parties other than the Reseller (“Third Parties”). The Agency further acknowledges that except for the payment to the Reseller for the Third-Party Items, all of its rights and obligations with respect thereto flow from and to the Third Parties. The Reseller shall provide the Agency with copies of all documentation and warranties for the Third-Party Items which are provided to the Reseller. The Reseller shall assign all applicable third party warranties for Deliverables to the Agency.

Is the Vendor an authorized GoAnywhere reseller for the products as listed in Section 4.0 Furnish and Deliver? Yes _____ No _____

2.10. POSSESSION AND REVIEW

During the evaluation period and prior to award, possession of the bids and accompanying information is limited to personnel of the issuing agency, and to the committee responsible for participating in the evaluation. Vendors who attempt to gain this privileged information, or to influence the evaluation process (i.e. assist in evaluation) will be in violation of purchasing rules and their offer will not be further evaluated or considered.

After award of contract the complete bid file will be available to any interested persons with the exception of trade secrets, test information or similar proprietary information as provided by statute and rule. Any proprietary or confidential information, which conforms to exclusions from public records as provided by N.C.G.S. §132-1.2 **must be clearly marked as such in the offer when submitted.**

2.11. AWARD

It is the general intent to award this contract to one Vendor. As provided by statute, award will be based on Best Value Analysis, Lowest Price Technically Acceptable Source Selection Method in accordance with N.C.G.S. §143B-1350(h), which provides that the offer must be in substantial conformity with the specifications herein, and 09 NCAC 06B.0302.

A link to the Interactive Purchasing System (IPS) allows the public to retrieve contract award information electronically from the Internet web site: <https://evp.nc.gov> Results may be found by searching by IFB number or agency name. This information may not be available for several weeks dependent upon the complexity of the acquisition and the length of time to complete the evaluation process.

2.12. BEST AND FINAL OFFERS (BAFO)

The State may establish a competitive range based upon evaluations of offers, and request BAFOs from the Vendor(s) within this range; e.g. “Finalist Vendor(s)”. If negotiations or subsequent offers are solicited, the Vendor(s) shall provide BAFO(s) in response. Failure to deliver a BAFO when requested shall disqualify the non-responsive Vendor from further consideration. The State will evaluate BAFO(s), oral presentations, and product demonstrations as part of the Vendors’ respective offers to determine the final rankings.

2.13. POINTS OF CONTACT

Contact by the Offeror with the persons shown below for contractual and technical matters related to this IFB is only permitted if expressly agreed to by the procurement officer named on page 4, or upon award of contract:

For Vendor Completion:

Vendor Contractual Point of Contact	Vendor Technical Point of Contact
Name of Vendor:	Name of Vendor:
Street:	Street:
City, State, Zip:	City, State, Zip:
Attn:	Attn:
Email:	Email:

3.0 SPECIFICATIONS

3.1. VENDOR STANDARD AGREEMENT(S)

The terms and conditions of Vendor's standard services, license, maintenance or other agreement(s) applicable to Services, Goods, Software and other Products acquired under this Agreement may apply to the extent such terms and conditions do not materially change the terms and conditions of this Agreement. In the event of any conflict between the terms and conditions of this Agreement and the Vendor's standard agreement(s), the terms and conditions of this Agreement relating to audit and records, jurisdiction, choice of law, the State's electronic procurement application of law or administrative rules, the remedy for intellectual property infringement and the exclusive remedies and limitation of liability in the DIT Terms and Conditions herein shall apply in all cases and supersede any provisions contained in Vendor's relevant standard agreement or any other agreement. The State shall not be obligated under any standard license and/or maintenance or other Vendor agreement(s) to indemnify or hold harmless the Vendor, its licensors, successors or assigns; nor arbitrate any dispute, nor pay late fees, legal fees or other similar costs.

The Vendor Standard Agreement, consisting of Fortra, LLC formerly known as Help/Systems, LLC Software License and Services Agreement obtained via Help Systems website on June 9, 2022 (Attachment A hereto), is referred to herein as the "Vendor Agreement" and is incorporated into this IFB 30-26035-ITD in the manner shown below.

The following sections of the Fortra, LLC formerly known as Help/Systems, LLC Software License and Services Agreement shall have no force or effect and shall be superseded by the North Carolina Department of Information Technology Terms and Conditions in IFB 30-26035-ITD:

The first two (2) paragraphs of the Vendor Agreement.

Section 1.0 – Definitions. 2. "Confidential Information," 3. "Effective Date," and 21. "Third-Party Software."

Section 2.0 – Scope and Term of Agreement

Section 5.0 – Customer Responsibilities, Subsections 5.1., 5.2, 5.4, and 5.5.

Section 6.0 Software Ownership; Intellectual Property Indemnification, Subsection 6.2

Section 7.0 – Services

Section 8.0 – Prices and Payment

Section 10.0 – Limitation of Liability

Section 11.0 – Termination

Section 12.0 – Nondisclosure of Confidential Information

Section 13.0 – General Provisions

The parties agree that the following sections of the Help/Systems, LLC Software License and Services Agreement, as modified, shall supersede DIT's Terms and Conditions:

Section 1.0—Definitions 0, 1, 4-20.

Section 3.0 – Software License Grant, Subsections 3.1 and 3.2

Section 3.0—Software License Grant, Subsection 3.3 as modified by adding the following sentence, "Notwithstanding the foregoing, transfers authorized by N.C.G.S. §143A-6 are not prohibited or limited and transfers in accordance with Section 7.0., Paragraph 3)d) of the North

Carolina Department of Information Technology Terms and Conditions in IFB 30-26035-ITD are permitted.”

Section 4.0—Software Delivery and Installation

Section 5.0—Customer Responsibilities, Subsection 5.3, as modified by adding the following sentence, “Notwithstanding the foregoing, Customer shall not be liable for or responsible for costs of audits.”

Section 6.0 – Software Ownership; Intellectual Property Indemnification, Subsection 6.1

Section 9.0 – Warranties, Subsections 9.1 and 9.2

Section 9.0—Warranties, Subsection 9.3, modified as shown by strikeouts for deleted text and underlining for insert text:

~~EXCEPT AS SET FORTH IN THIS SECTION 9 AND THE NORTH CAROLINA DEPARTMENT OF INFORMATION TECHNOLOGY TERMS AND CONDITIONS IN IFB 30-26035-ITD, THE SOFTWARE, SOFTWARE DOCUMENTATION AND SERVICES ARE PROVIDED ON AN “AS IS” BASIS. HELPSYSTEMS SHALL HAVE NO LIABILITY FOR THE SOFTWARE, SOFTWARE DOCUMENTATION OR ANY SERVICE PROVIDED IN FURTHERANCE OF THIS AGREEMENT; HELPSYSTEMS MAKES AND CUSTOMER RECEIVES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS AGREEMENT OR ANY OTHER COMMUNICATION; AND HELPSYSTEMS SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR THAT USE BY CUSTOMER WILL BE ERROR OR DEFECT FREE OR UNINTERRUPTED.~~

3.2. VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.

In accordance with N.C.G.S. §143B-1361(b), Vendor must detail in the IFB/RFQ response, the manner in which it intends to utilize resources or workers located outside the U.S. The State of North Carolina will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award for any such Vendor’s offer. The Vendor shall provide the following for any offer or actual utilization or contract performance:

- a) The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract and whether any of this work will be performed outside the United States.
- b) The corporate structure and location of corporate employees and activities of the Vendors, its affiliates or any other subcontractors.
- c) Notice of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing Services under a state contract outside of the United States.
- d) Any Vendor or subcontractor providing call or contact center Services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center Services are being provided.

Will any work under this contract be performed outside the United States? YES NO

If YES, state the country in which the work is being performed and what type of work is being performed (help desk, technical support, coding, etc.)

3.3. E-VERIFY

Pursuant to N.C.G.S. § 143B-1350(k), the State shall not enter into a contract unless the awarded Vendor and each of its subcontractors comply with the E-Verify requirements of N.C.G.S. Chapter 64, Article 2. Vendors are directed to review the foregoing laws. Any awarded Vendor must submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.

3.4. BRAND SPECIFIC PRODUCT

Manufacturer(s) name and product descriptions used in this solicitation are product specific. The items offered in response to this solicitation must be the manufacturer and type specified. Failure to comply with this requirement will result in rejection of offer.

3.5. CONTRACT TERM

A contract awarded pursuant to this IFB shall have an effective date as provided in the Notice of Award. The term shall be one (1) year and will expire upon the anniversary date of the effective date unless otherwise stated in the Notice of Award, or unless terminated earlier. The State retains the option to extend this contract for two (2) additional one (1) year periods at its sole discretion.

3.6 SECURITY SPECIFICATIONS

3.6.1 SOLUTIONS HOSTED ON STATE INFRASTRUCTURE

The State is requesting that Vendors provide a completed Vendor Readiness Assessment Report State Hosted Solutions (“VRAR”) at offer submission. This is preferred at offer submission, however, if the State requests a Vendor to supply the VRAR after offer submittal, the Vendor must supply this report within seven (7) business days of the State’s request. Failure to supply the VRAR within this time frame will render the Vendor’s offer non-responsive. This report is located at the following website:

<https://it.nc.gov/documents/vendor-readiness-assessment-report>

The GoAnywhere Software Solution will be required to receive and securely manage data that is classified as High Risk. Refer to the North Carolina Statewide Data Classification and Handling policy for more information regarding this data classification. The policy is located at the following website: <https://it.nc.gov/document/statewide-data-classification-and-handling-policy>

To comply with the State’s Security Standards and Policies, State agencies are required to perform annual security/risk assessments on their information systems using NIST 800-53 controls.

4.0 FURNISH AND DELIVER

YEAR 1:

ITEM #	QTY	UNIT	DESCRIPTION	UNIT COST	EXTENDED COST
1	1	year	Renewal of Support for GoAnywhere Premium Bundle – Perpetual, QTY 1 (system type online-non-production, hardware ID MFT 49045)		

2	1	year	Renewal of Support for GoAnywhere Premium Bundle – Perpetual, QTY 1 (system type online-non-production, hardware ID MFT 49047)		
3	1	year	Renewal of Support for GoAnywhere Premium Bundle – Perpetual, QTY 2 nodes (system type online-production, hardware ID MFT 49041)		
4	1		Any cost associated with reinstatement of support in the event of a lapse		

Total Offer Cost _____

4.1. OPTIONAL COSTS

May or may not be purchased by the State:

YEAR 2:

ITEM #	QTY	UNIT	DESCRIPTION	UNIT COST	EXTENDED COST
1	1	year	Optional year 2 Support for GoAnywhere Premium Bundle – Perpetual, QTY 1 (system type online-non-production, hardware ID MFT 49045)		
2	1	year	Optional year 2 Support for GoAnywhere Premium Bundle – Perpetual, QTY 1 (system type online-non-production, hardware ID MFT 49047)		
3	1	year	Optional year 2 Support for GoAnywhere Premium Bundle – Perpetual, QTY 2 nodes (system type online-production, hardware ID MFT 49041)		

YEAR 3:

ITEM #	QTY	UNIT	DESCRIPTION	UNIT COST	EXTENDED COST
1	1	year	Optional year 3 Support for GoAnywhere Premium Bundle – Perpetual, QTY 1 (system type online-non-production, hardware ID MFT 49045)		
2	1	year	Optional year 3 Support for GoAnywhere Premium Bundle – Perpetual, QTY 1 (system type online-non-production, hardware ID MFT 49047)		
3	1	year	Optional year 3 Support for GoAnywhere Premium Bundle – Perpetual, QTY 2 nodes (system type online-production, hardware ID MFT 49041)		

5.0 HISTORICALLY UNDERUTILIZED BUSINESSES

For Vendor Completion:

“Historically Underutilized Businesses (HUBs) consist of minority, women and disabled business firms that are at least fifty-one percent owned and operated by an individual(s) of the aforementioned categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled.” <http://ncadmin.nc.gov/businesses/hub>

Pursuant to N.C.G.S. §§143B-1361(a), 143-48 and 143-128.4, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. This includes utilizing subcontractors to perform the required functions in this IFB.

Is Vendor a Historically Underutilized Business? YES NO

If “YES”, specify classification of the employee (e.g. HelpDesk support, technical support, Architect, Developer, etc.): _____

6.0 DEPARTMENT OF INFORMATION TECHNOLOGY INSTRUCTIONS TO VENDORS

- 1) **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
- 2) **DEFINITIONS:**
 - **NCDIT:** The North Carolina Department of Information Technology, formerly Office of Information Technology Services
 - **NCDIT CONVENIENCE CONTRACT:** A contract that is used for the procurement of IT goods or Services. These contracts are in place for the convenience of the state and use of them is optional.
 - **OPEN MARKET CONTRACT:** A contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.
 - **TERM CONTRACT:** A contract in which a source of supply is established for a specified period of time for specified Services or supplies; usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price
 - **THE STATE:** Is the state of North Carolina and its agencies.
 - **VENDOR:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.
- 3) **PROMPT PAYMENT DISCOUNTS:** Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
- 4) **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from NCDIT. The Vendor is cautioned that the requirements of this IFB/RFQ can be altered only by written addendum and that verbal communications from whatever source are of no effect.
- 5) **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all offers, to waive any informality in offers and, unless otherwise specified by the Vendor, to accept any item in the offer. If either a unit price or an extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
- 6) **AWARD OF CONTRACT:** Responsive offers will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by N.C.G.S. §143-135.9, and in accordance with N.C.G.S. §143B-1350(h), which provides that the offer must be in substantial conformity with the specifications herein, and 09 NCAC 06B.0302. Unless otherwise specified by the State or the Vendor, the State reserves the right to accept any item or group of items on a multi-item offer. In addition, on agency specific or term contracts, NCDIT reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by NCDIT to be pertinent or peculiar to the purchase in question.
- 7) **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.
- 8) **PROTEST PROCEDURES:** When an offeror wants to protest a contract awarded pursuant to this solicitation that is over \$25,000 they must submit a written request to the issuing agency at the address given in this document. This request must be received in this office within fifteen (15) calendar days from the date of the contract award, and must contain specific sound reasons and any supporting documentation for the protest. **Note:** Contract award notices are sent **only** to those actually awarded contracts, and not to every person or firm responding to this solicitation. IFB/RFQ status and Award notices are posted on the Internet at <https://evp.nc.gov>. **All protests**

will be governed by NCAC Title 9, Department of Information Technology (formerly Office of Information Technology Services), Subchapter 06B Sections .1101 - .1121.

- 9) **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** Vendor Link NC allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System at the following web site: <https://evp.nc.gov/>
- 10) **DIGITAL IMAGING:** The State will digitize the Vendor's response if not received electronically, and any awarded contract together with associated contract documents. This electronic copy shall be a preservation record, and serve as the official record of this solicitation with the same force and effect as the original written documents comprising such record. Any printout or other output readable by sight shown to reflect such record accurately is an "original."

7.0 DEPARTMENT OF INFORMATION TECHNOLOGY TERMS AND CONDITIONS

1) DEFINITIONS: Supplementing the Definitions appearing in the body of this solicitation, above:

- a) "Agency" means the Agency purchasing the goods or Services.
- b) "Custom or Modified Software" means Software that may be modified by the State, or by Vendor at the State's request or direction to perform in accordance with specifications.
- c) "Deliverable"/"Product Warranties" shall mean and include the warranties provided for products or deliverables licensed to the State, and as included in Paragraph 3 c), of these Terms and Conditions unless superseded by a Vendor's Warranties pursuant to Vendor's License or Support Agreements.
- d) "Products" includes Software, Hardware, equipment, options, documentation, accessories, supplies, spare parts.
- e) "Services" means the tasks and duties associated with the provision of support and maintenance for the Software hereunder.
- f) "Software" means in the context of this IFB the previously licensed software application(s) for which support and maintenance Services are sought, including any modifications, patches, additions or other programming done to such software applications by the Vendor as part of the Support Services.
- g) "State" shall mean the State of North Carolina, the Office of Information Technology Services as an Agency, or in its capacity as the Award Authority.
- h) "Support" includes Software maintenance and repair (outside any required by any applicable warranty), Software updates maintenance and support Services, consulting, training and other support Services provided by or through Vendor under this solicitation.

2) INTELLECTUAL PROPERTY INDEMNITY

- a) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Services or material supplied by the Vendor, their use or operation infringes on a patent, copyright, trademark or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in settlement against the State in any such action; damages shall be limited as provided in N.C.G.S. 143B-1350(h1). Such defense and payment shall be conditioned on the following:
 - i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
 - ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.
- b) If any modifications to the Software applied by Vendor become the subject of a claim of infringement of a patent, copyright, Trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the State the right to continue using the Software, or to replace or modify the same to become noninfringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to take back any affected Software modifications, and refund any sums the State has paid Vendor for Services and the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge.
- c) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation results from the State's alteration of any Vendor-branded Software, or from the continued use of the good(s) or Services after receiving notice they infringe on an intellectual property right of a third party.

3) EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY

- a) For purposes of the exclusive remedies and limitations of liability set forth herein, Vendor shall be deemed to include the Vendor and its employees, agents, representatives, subcontractors, and suppliers and damages shall be deemed to refer collectively to all injuries, damages, losses, liabilities, expenses or costs incurred.
- b) The Vendor's liability for damages to the State arising under the contract shall be limited to two times the value of the Contract.
- c) The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Deliverable/Product Warranty compliance, or to claims for injury to persons or damage to tangible personal property caused by Vendor's gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 *et seq.*, the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor's failure to comply with the requirements stated therein.
- d) For delays in the delivery or successful Product or Software installation, whichever is applicable, Vendor shall have no liability unless the delivery or successful installation date is delayed by more than thirty (30) days by causes not attributable either to the State or to Force Majeure conditions, in which case the State shall have the right, as its remedies:
 - i) To recover direct costs including replacement Products, if any, attributable to Vendor's delay, and
 - ii) To cancel the order without incurring cancellation charges.
 - iii) Vendor shall have no liability unless the default in delivery of Services is occasioned by causes not attributable either to the State or to Force Majeure conditions

4) SUPPORT AND MAINTENANCE

- a) Except as specifically provided herein or in an approved attachment hereto, and unless otherwise consistently provided by Vendor's standard agreement for support, and except for the provisions in the Vendor License Agreements paragraph above, an order for support will constitute the State's acceptance of the terms of the standard agreement for Support in effect on the date of the order, subject to the order of precedence set forth in this Solicitation.
- b) To be eligible for support, Software must be in good operating condition and at then current specified revision levels, having all current enhancements, modifications, updates, or upgrades supplied by Vendor. Vendor may charge its standard rates in effect on the date support service is provided in addition to any other charges if the Software does not conform to the specified revision levels.
- c) Except as otherwise agreed in writing, and subject to the other terms and conditions of this solicitation, the Services shall include, at a minimum, during the term(s) of this Agreement, the following Maintenance/Support Services for at least the current version and one previous version of any Software identified in this solicitation:
 - (1) Basic Services. The Vendor will provide at least normal and usual software support and maintenance Services generally provided to customers in a similar program, position or setting consistent with and subject to the payment of the support and maintenance fees agreed upon in this Contract.
 - (2) Error Correction. Upon notice by State of a problem with the Software (which problem can be verified), Vendor shall use reasonable efforts to correct or provide a working solution for the problem. The State shall comply with all reasonable instructions or requests of Vendor in attempts to correct an error or defect in the Software. Vendor and the State shall act promptly and in a reasonably timely manner in communicating error or problem logs, other related information, proposed solutions or workarounds, and any action as may be necessary or proper to obtain or affect maintenance Services under this Paragraph.

- (3) Notification of Errors. Vendor shall notify the State of any material errors or defects in the Software known, or made known to Vendor from any source during the term of this Agreement that could cause the production of inaccurate or otherwise materially incorrect, results. Vendor shall initiate actions as may be commercially reasonable or proper to effect corrections of any such errors or defects.
 - (4) Implementation of Updates. Vendor shall provide to the State, at no additional charge, implementation or application of all new releases and bug fixes (collectively referred to as "Changes") for any Software developed or published by the Licensor and made generally available to its other customers.
 - (5) Telephone Assistance. Vendor shall provide the State with telephone and Internet access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, during normal business hours, 8:00 AM – 5:00 PM Eastern Time, Monday-Friday. Vendor shall respond to the telephone requests for Software maintenance service within four hours, for calls made at any time.
 - (6) Custom Software. In the event Vendor provides for Custom programming herein at the request of the State, such programming will not become a part of the Licensor's licensed code unless the Licensor's License with the State so provides. Such custom programming will become the property of the State, with a perpetual and unlimited license of the custom programming back to the Vendor for its use.
 - (7) Security. The provision of onsite support or maintenance is subject to the standard security procedures of the facility or agency within which the onsite Services are to be provided.
 - (8) Online Services. If the Services involve one or more online elements (Online Services), the Vendor agrees:
 - (i) To maintain the confidentiality of any State Data which is or may be stored in the Vendor's online storage devices.
 - (ii) To prevent any malware or other harmful code from being transmitted to the State.
 - (iii) To provide the Online Services in a consistently available and commercially reasonable manner.
 - (9) Staff. Vendor shall maintain a trained support staff which shall professionally render the Services provided for in this contract.
 - (10) Training. If this solicitation so provides, the agency(ies) covered by this solicitation may enroll its users in any relevant training classes which may be offered by the Vendor at the fees which are mutually agreed upon by the State and Vendor.
- 5) **VENDOR'S REPRESENTATION:** Vendor warrants that qualified personnel will provide Services in a professional manner. "Professional manner" means that the personnel performing the Services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State under this Contract. Vendor will serve as the prime Vendor under this Contract. Should the State approve any subcontractor(s), the Vendor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Third party subcontractors, if approved, may serve as subcontractors to Vendor. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).
- a) Intellectual Property. Vendor has the right to provide the Services and Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Vendor represents that its Services and Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
 - b) Inherent Services. If any Services, Deliverables, functions, or responsibilities not specifically described in this Contract are required for Vendor's proper performance, provision and

delivery of the Service and Deliverables pursuant to this Contract, or are an inherent part of or necessary sub-task included within the Service, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract. Unless otherwise expressly provided in the Contract, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and Deliverables

- c) Vendor warrants that it has the financial capacity to perform and to continue perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction
- d) Warranty as to Equipment; Hardware. Vendor warrants that the equipment and hardware that it provides pursuant to this Contract, if any, shall be free from defects in materials, in good working order and be maintained in good working order.

6) SOFTWARE RETIREMENT

- a) Unless otherwise provided in the Software License or in Vendor's standard agreement as agreed by the State, Vendor retains the right to retire support for a version of the Software and stop providing, for such version, Maintenance, Updates or Services, upon providing one-hundred and eighty (180) days written notice to the State of its intent to do so. The decision to stop maintaining a version of the Software is the sole business discretion of Vendor and shall not be deemed a breach of contract. If Vendor retires the version of the Software provided to the State and if the State has paid all applicable annual Maintenance Fees subsequent to executing this Agreement, the State shall be entitled to receive, at no additional charge, a newer version of the Software that supports substantially the same functionality as the licensed version of the Software. Newer versions of the Software containing substantially increased functionality will be made available to the State for an additional fee.
- b) Vendor may, at no additional charge, modify Software to improve operation and reliability or to meet legal requirements.
- c) Relocation of Software is the State's responsibility and may result in additional support charges and modified service response times as agreed. Software moved to another State facility or Agency may continue to be serviced subject to availability of a Vendor authorized support provider.
- d) Vendor is not required to provide support for non-qualified Software, or Software not identified in this Agreement. "Non-Qualified Products" are Software not supplied or approved by Vendor, and Software for which the State does not allow Vendor to incorporate modifications. The State is responsible, upon request of the Vendor, for removing non-qualified Software to allow Vendor to perform Software Support Services.
- e) Support does not cover any damage or failure caused by:
 - i) Media and supplies or use of items not designed or designated for use with Products; or
 - ii) Site conditions that do not conform to Vendor's previously established site specifications; or
 - iii) Neglect, improper use, fire or water damage, electrical disturbance, transportation by the State, work or modification by persons other than Vendor personnel, or other authorized parties.

7) CONFIDENTIALITY OF DATA: The State is responsible, as to data under the State's control, for the security of its proprietary or confidential information, for its data, and for maintaining a procedure and process to reconstruct lost or altered files, data or programs.

8) TRANSPORTATION: Transportation charges for any software or other Deliverable shall be FOB Destination unless delivered by internet or file-transfer as agreed by the State, or otherwise specified in the solicitation document or purchase order.

- 9) **TRAVEL EXPENSES:** **All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed.** In the event that the Vendor may be eligible to be reimbursed for travel expenses upon specific written request by the State arising under the performance of this Contract, reimbursement will be at the out-of-state rates set forth in GS §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under this Agreement.
- 10) **PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Agreements. Violations of this provision may result in debarment of the vendor(s) or Vendor(s) as permitted by 9 NCAC 06B.1206, or other provision of law.
- 11) **AVAILABILITY OF FUNDS:** Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in this Agreement. If this Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of this Agreement extends into fiscal years subsequent to that in which it is approved such continuation of the Agreement *is expressly contingent upon* the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Agreement. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Agreement is terminated under this paragraph, Vendor agrees to take back any affected Products and software not yet delivered under this Agreement, terminate any Services supplied to the Agency under this Agreement, and relieve the Agency of any further obligation thereof. The State shall remit payment for Services accepted prior to the date of the aforesaid notice in conformance with the payment terms.
- 12) **PAYMENT TERMS:** The total Software Support Services or Maintenance Fee (provided the State subscribes or purchases such Services) for the first year shall be invoiced upon execution of this contract. The Software Support Service or Maintenance Fee for subsequent contract renewal years, if any, will be invoiced annually sixty (60) days prior to the anniversary date beginning each subsequent year. Payment terms for Services are due and payable the month following the month for which charges accrue, or in accordance with the contract payment schedule.
- 13) **ACCEPTANCE CRITERIA FOR SOFTWARE MODIFICATIONS:** Acceptance testing is required for all Vendor supplied upgrades, enhancements, patches or modifications to the Software unless provided otherwise in the solicitation documents or a Statement of Work. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the State's specifications and Vendor's technical representations. Acceptance of such Services may be controlled by amendment hereto, or additional terms as agreed by the parties. In the event acceptance of such modifications to Software or the accompanying Services is not described in additional contract documents, the State shall have the obligation to notify Vendor, in writing and within ten (10) days following delivery of any such modifications or Software Services if such modifications or Services are unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of modifications to Software.

14) CONFIDENTIALITY: In accordance with 9 NCAC 6B.0103 and 6B.1001 and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in N.C.G.S. §132-1 *et seq.* Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. **Under no circumstances shall price information be designated as confidential.** Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type “CONFIDENTIAL”. By so marking any page, the Vendor warrants that it has formed good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. The State may serve as custodian of Vendor’s confidential information and not as an arbiter of claims against Vendor’s assertion of confidentiality. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys’ fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor’s confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. In any event, the State shall have no liability to Vendor with respect to the disclosure of Vendor’s confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9.

- a) The Vendor shall protect the confidentiality of all information, data, instruments, studies, reports, records and other materials provided to it by the Agency or maintained or created in accordance with this Agreement. No such information, data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written consent of the State Agency. The Vendor will have written policies governing access to and duplication and dissemination of all such information, data, instruments, studies, reports, records and other materials.
- b) All project materials, including software, data, and documentation created during the performance or provision of Services hereunder is the property of the State of North Carolina and must be kept confidential or returned to the State, or destroyed. Proprietary vendor materials shall be identified to the State by vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be subject to a perpetual, royalty free, nonexclusive license to the State.

15) ACCESS TO PERSONS AND RECORDS: Pursuant to N.C.G.S. §147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement or to costs charged to this Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Agreement. Additional audit or reporting requirements may be required by any Agency, if in the Agency’s opinion, such requirement is imposed by federal or state law or regulation. The Joint Legislative Commission on Governmental Operations and the legislative employees whose primary responsibility is to provide professional or administrative services to the Commission may audit the records of the Vendor during and after the term of this Agreement to verify accounts and data affecting fees or performance in accordance with Chapter 120, Article 13.

- 16) ASSIGNMENT:** Vendor may not assign this Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Agreement accepting the terms and conditions and duties as previously agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.
- 17) INSURANCE COVERAGE:** During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:
- a) Worker's Compensation - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of Vendor's employees who are engaged in any work under the Contract. If any work is sublet, the Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Contract; and
 - b) Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
 - c) Automobile - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment; and
 - d) Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.
- 18) NOTICES:** Any notices required under this Agreement should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier, facsimile or by hand.
- 19) TITLES AND HEADINGS:** Titles and Headings in this Agreement are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.
- 20) AMENDMENT:** This Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor.
- 21) TAXES:** The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of this Agreement. Applicable State or local sales taxes shall be invoiced as a separate item.
- 22) GOVERNING LAWS, JURISDICTION, AND VENUE:** This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for

matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.

- 23) DEFAULT:** In the event Services or other Deliverable furnished or performed by the Vendor during performance of any Contract term fail to conform to any material requirement(s) of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, the State may cancel the contract. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
- a) If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by this Contract, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.
 - b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences due to the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offer documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.
- 24) WAIVER OF DEFAULT:** Waiver by either party of any default or breach by the other Party shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in writing and signed by authorized representatives of the Agency and the Vendor, and made as an amendment to this Contract pursuant to Paragraph 20) (Amendment) herein.
- 25) FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
- 26) COMPLIANCE WITH LAWS:** The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
- 27) EQUAL EMPLOYMENT OPPORTUNITY:** Vendor shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.
- 28) TERMINATION:** Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated. Should this contract be terminated for cause or for convenience, the fees paid for the current term of support or maintenance for the remaining portion of the term shall be rebated pro rata.
- a) The parties may mutually terminate this Contract by written agreement at any time.
 - b) The State may terminate this Contract, in whole or in part, pursuant to Paragraph 23) (Default), or pursuant to the Terms and Conditions in the Solicitation Documents, or pursuant to any of the following
 - i. Termination for Cause: In the event any goods, software, or service furnished by the Vendor during performance fails to conform to any material specification or requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or Services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject

only to the limitations provided in Paragraph 3) (Indemnity). The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of this Contract; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.

- ii. Termination For Convenience Without Cause: The State may terminate service contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and Services delivered in conformance with the Contract up to the date of termination.

29) DISPUTE RESOLUTION: The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

30) SEVERABILITY: In the event that a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Agreement shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

31) ADVERTISING/PRESS RELEASE: The Vendor absolutely shall not publicly disseminate any information concerning the Contract without prior written approval from the State or its Agent. For the purpose of this provision of the Contract, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.

32) FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT: The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

33) ELECTRONIC PROCUREMENT: Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

- a) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, offers received, evaluation of offers received, award of contract, and the payment for goods delivered.
- b) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit

a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

ATTACHMENT A: FORTRA, LLC FORMERLY KNOWN AS HELP/SYSTEMS, LLC SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement (the "Agreement") is between Help/Systems, LLC, a Delaware limited liability company with offices located at 11095 Viking Drive, Suite 100, Eden Prairie, MN 55344 USA ("HelpSystems") and the individual or type of Person intending to download, install or otherwise use the Software (the "Customer" and together with HelpSystems, the "Parties").

HELPSYSTEMS PROVIDES THE SOFTWARE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT CUSTOMER ACCEPTS AND COMPLIES WITH THEM. BY DOWNLOADING, INSTALLING OR OTHERWISE USING THE SOFTWARE. CUSTOMER (A) ACCEPTS THIS AGREEMENT AND AGREES THAT CUSTOMER IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENTS AND WARRANTS THAT: (I) IF AN INDIVIDUAL, CUSTOMER IS 18 YEARS OF AGE OR OLDER; AND (II) CUSTOMER HAS THE RIGHT, POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT AND BIND CUSTOMER TO ITS TERMS. IF CUSTOMER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, HELPSYSTEMS WILL NOT AND DOES NOT LICENSE THE SOFTWARE TO CUSTOMER AND CUSTOMER MUST NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE OR SOFTWARE DOCUMENTATION.

SECTION 1. Definitions.

For the purposes of this Agreement, the following terms have the meanings set forth below

1. **"Authorized Device"** means a server, partition, computer, or any other virtual or otherwise emulated hardware system controlled or owned by Customer that meets the requirements for operation of the Software as identified in the Software Documentation. Each Authorized Device, including its operating system, must be of a type on which the Software is designed to be used. If the Software license is subject to any quantity or Seat restrictions, Customer is authorized to maintain the Software on the number of Authorized Devices as set forth in the applicable Invoice.
2. **"Authorized User"** means a designated Person or number of Persons who are granted access to the Software by HelpSystems.
3. **"Confidential Information"** means all non-public, confidential or proprietary information, in whatever form or medium, disclosed before, on or after the Effective Date, by one Party to the other Party or its affiliates, or to any of such Party's or its affiliates' employees officers, directors, partners, members, shareholders, agents, attorneys, accountants, contractors or advisors, and shall include, but not be limited to, the Services rendered by HelpSystems to Customer, the Software licensed by HelpSystems to Customer, information relating to a Party's business concepts, non-public or personal information about customers, merchandising methods, ideas, processes, formulas, data

programs, know-how, improvements, discoveries, business plans, financial information and compilations, developments, designs, inventions, techniques, marketing plans, strategies, forecasts, potential new product information, budgets, technology, projections, pricing strategies, costs, customer and supplier information, consumer personally identifiable information and all other information defined as a “trade secret” under the laws of the applicable jurisdictions.

4. **“Effective Date”** unless otherwise set forth in a signature page to this Agreement (if applicable), means the date the Customer downloads, installs or uses the Software.
5. **“Fees”** means, collectively, any License Fees, Maintenance Fees, Subscription Fees and Professional Services Fees.
6. **“Invoice”** means any statement of charges issued by HelpSystems for Fees.
7. **“License Fees”** means the fees paid to HelpSystems for a subscription license or a perpetual license as indicated in an Invoice.
8. **“License Term”** means a license grant in accordance with this Agreement for a designated number of Seats, if applicable, and for the time period (perpetual or limited) as reflected in the Invoice.
9. **“Maintenance Fees”** means the Maintenance Services fees paid to HelpSystems for perpetual licenses.
10. **“Maintenance Period”** if applicable, means the time period that HelpSystems will provide Maintenance Services for a perpetual license.
11. **“Maintenance Services”** for perpetual and subscription licenses, means providing the Customer with (a) access to HelpSystems’ technical assistance; (b) access to HelpSystems’ self-service utilities; and (c) access to updates and enhancements of the Software.
12. **“Person”** means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.
13. **“Professional Services”** means implementation or integration services; training services; programming or coding services; data conversion services; on-site consultation, or other customized services, provided by HelpSystems at the request of the Customer, other than Maintenance Services.
14. **“Professional Services Fees”** means the fees paid to HelpSystems for Professional Services under a Statement of Work.
15. **“Seats”** means individuals with a unique user identification that can utilize or be managed by the Software, including but not limited, to those individuals that are designated by Customer.
16. **“Services”** means, collectively, any Maintenance Services and Professional Services provided by HelpSystems.
17. **“Software”** means the products delivered to Customer under the terms of this Agreement, including all updates, additions, and enhancements created by HelpSystems for those products.
18. **“Software Documentation”** means any tutorials, technical publications, and materials supplied with the Software, which include system requirements for implementation and operation of the Software.
19. **“Statement of Work”** means a document(s) that detail(s) the Professional Services to be performed by HelpSystems for Customer, which is signed by a duly authorized representative of both Parties.
20. **“Subscription Fees”** means the fees paid to HelpSystems for subscription licenses.
21. **“Subscription Period”** if applicable, means the agreed time period for the grant of the Software license to the Customer.
22. **“Third-Party Software”** means software products not developed by HelpSystems and/or its subsidiaries that HelpSystems may distribute to Customer specifically for purposes related to this Agreement. All Third-Party Software shall be governed strictly and solely by such third-party’s (i) clickwrap agreement, which requires Customer to “Accept” and/or “Agree” before utilizing and/or installing such software; (ii) the terms and conditions referenced *via* a universal resource locator (URL) indicated on the applicable quotation; or (iii) terms and conditions contained within a text file (*e.g.* .txt), which accompanies the Third-Party Software.

SECTION 2. Scope and Term of Agreement.

This Agreement sets forth the terms and conditions under which HelpSystems shall offer a perpetual or subscription license to the Software and provide Services to Customer. This Agreement shall remain in effect unless and until terminated by HelpSystems or Customer in accordance with Section 11.

SECTION 3. Software License Grant.

3.1 Subject to the terms and provisions of this Agreement, including Customer's payment obligations, HelpSystems hereby grants to Customer, and Customer hereby accepts, a limited non-exclusive, non-transferable, non-assignable, and worldwide license for the License Term as reflected in the applicable Invoice to (i) install the Software and any Third-Party Software in the quantities and/or Seats on Authorized Devices as set forth in the applicable Invoice, (ii) use the Software and/or Third-Party Software in object-code/executable form only for Customer's internal business purposes, and (iii) use the Software Documentation and/or Third Party Software Documentation to support the use of the Software and/or Third-Party Software.

3.2 Customer specifically agrees to limit the use of the Software, Maintenance Services, Professional Services (if any), Software Documentation, and Third-Party Software (if any) to those specifically granted in this Agreement. Without limiting the foregoing, Customer specifically agrees not to (i) attempt to reverse engineer, decompile, disassemble, or attempt to derive the source code of the Software or any portion thereof; (ii) modify, port, translate, localize or create derivative works of the Software and/or Third-Party Software; (iii) remove any of HelpSystems' or its vendors', copyright notices and proprietary legends; (iv) attempt to circumvent, disable or defeat the limitations on Customer's use of the Software which are encoded into the Software and/or Third-Party Software's key; (v) use the Software and/or Third-Party Software (a) to infringe on the intellectual property rights of any third party or any rights of publicity or privacy; (b) to violate any law, statute, ordinance or regulation (including but not limited to the laws and regulations governing export/import control, unfair competition, anti-discrimination and/or false advertising); (c) to propagate any virus, worms, Trojan horses or other programming routine intended to damage any system or data; (d) in any application that may involve risks of death, personal injury, severe property damage or environmental damage, or in any life support applications, devices or systems; and/or (e) such that the total number of Seats in excess of the total Seats allocated to Customer as reflected in the applicable Invoice; (vi) file copyright or patent applications that include the Software and/or Third-Party Software or any portion thereof; (vii) use the Third-Party Software within any other applications or products other than with the Software; and/or (viii) make any Customer copies of the Software and/or Third Party Software except with the prior written approval of HelpSystems and for nonproductive backup purpose only.

3.3 Transfers of the Software are not permitted, except in the case where: (a) Customer is in receipt of a prior written consent of HelpSystems, which may be withheld by HelpSystems in HelpSystems' sole discretion; (b) Customer has paid any additional fee which HelpSystems may charge Customer in HelpSystems' sole discretion; (c) Customer transfers the most recent production release of the Software, including any and all updates to the Software; and (d) the Software is removed from the Authorized Device from which it is transferred.

SECTION 4. Software Delivery and Installation.

Upon payment of the License Fee, HelpSystems shall deliver a key to make the current version of the Software available to Customer. Whether by providing an electronic download, physical distribution, or any other form of conveyance, the Software shall be deemed delivered once it is made available to Customer. Customer shall be responsible for installation of the Software on an Authorized Device. The Customer may also access and utilize any Software Documentation related to the Software delivered under the terms of this Agreement.

SECTION 5. Customer Responsibilities.

5.1 Customer acknowledges that the Software and/or Services are subject to export control laws in the United States, the United Kingdom (UK) and elsewhere. Customer shall comply with all applicable export laws, obtain all applicable export licenses and will not export or re-export any part of the Software to any country in violation of such restrictions.

5.2 Customer represents and warrants that it has not taken, and will not take, any action that would cause the other Party, and its subsidiaries or affiliates to violate any anti-corruption law, including but not limited to the United States Foreign Corrupt Practices Act, the UK Bribery Act, and all other applicable anti-corruption laws.

5.3 Customer will maintain records reasonably required to verify its compliance with this Agreement. Without limitation to the foregoing, Customer will purchase sufficient licenses for the number of Seats it will need at all times. On HelpSystems' written request, not more frequently than annually, HelpSystems may audit Customer's use of the Software. Any such audit shall be conducted during Customer's normal business hours and in such a manner as to avoid unreasonable interference with Customer's business operations. If an audit reveals that Customer has underpaid fees to HelpSystems, Customer shall be invoiced for such underpaid fees.

5.4 Customer acknowledges that the Software is a "Commercial Item", as that term is defined at 48 C.F.R. § 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. § 12.212 and 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. §§ 12.212, 227.7202-1 through 227,7202-4, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end-users (a) only as Commercial Items and (b) with only those rights as are granted to all other end-users pursuant to the terms and conditions in this Agreement.

5.5 Customer acknowledges that some of HelpSystems' Software features allows the Software to communicate with it remotely via the internet to (i) determine if there are any updates, enhancements, or fixes available and if so to allow such updates etc. to be provided to Customer (if applicable) and (ii) for its technical support team to collect information which assists them in providing services to Customer. Some of these features can be turned off by Customer in the administrator user interface. The ability of technical support services to support Customer efficiently and in the best way will be impaired if Customer turns off any of these features. HelpSystems does not collect any personal data as part of this sharing of information and will treat all information received in confidence. If Customer is using the Software through a managed service or hosted service provided by HelpSystems, Customer accepts that its data, including personal data, may be held on servers and/or in environments that are owned and controlled by HelpSystems or third parties it contracts with to provide the service. HelpSystems recognizes that Customer data is sensitive and will treat all such data as confidential when held in its controlled servers or environments all of which operate in accordance with HelpSystems' privacy policies.

SECTION 6. Software Ownership; Intellectual Property Indemnification.

6.1 HelpSystems shall have sole and exclusive ownership of all right, title, and interest in and to the Software, Services, Software Documentation, and all copies thereof including all derivations, modifications and enhancements thereto (including but not limited to ownership of all intellectual property rights). The applicable vendor of Third-Party software shall have sole and exclusive ownership of all right, title, and interest in such Third-Party Software and all copies thereof including all derivations, modifications and enhancements thereto (including but not limited to ownership of all intellectual property rights). This Agreement does not provide Customer with title or ownership of the Software, Services and/or Software Documentation, Third-Party Software and Third-Party Software Documentation, but only a right of limited use.

6.2 HelpSystems shall defend at its own expense any action against Customer brought by a third party to the extent that the action is based upon a claim that the Software directly infringes a valid United States patent or copyright, and HelpSystems will pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. HelpSystems' obligations under this Section 6.2 are conditioned on (a) Customer notifying HelpSystems within ten (10) days of notice of such action, (b) Customer giving HelpSystems sole control of the defense thereof and any related settlement negotiations, and (c) Customer cooperating with HelpSystems in such defense (including, without limitation, by making available to HelpSystems all documents and materials in Customer's possession or control that are relevant to the infringement or misappropriation claims, and by making Customer's personnel available to testify or consult with HelpSystems or its attorneys in connection with said defense). If the Software becomes, or in HelpSystems' opinion is likely to become, the subject of an infringement or misappropriation claim, HelpSystems may, at its option and expense, either (i) procure for Customer the right to continue using the Software; (ii) replace or modify the Software so that it becomes non-infringing, or (iii) terminate Customer's right to use the Software and give Customer a refund or credit of the amounts actually paid by Customer to HelpSystems for the Software less a reasonable allowance for the period of time Customer has used the Software. HelpSystems will have no obligation with respect to any infringement or misappropriation claim based upon (1) any use of the Software not in accordance with the Agreement or for purposes not intended by HelpSystems; (2) any use of the Software in combination with other products, equipment, software, or data not supplied by HelpSystems; (3) any use of any release of the Software other than the most current release made available to Customer; or (4) any modification of the Software made by any

Person other than HelpSystems. This Section 6.2 states HelpSystems' entire liability and Customer's sole and exclusive remedy for infringement and misappropriation claims and actions.

SECTION 7. Services.

7.1 Customer shall receive Maintenance Services for as long as the Subscription Period for the Software continues or if Customer purchases a perpetual license for as long as the Maintenance Period for the Software continues. The initial Subscription Period or Maintenance Period shall commence and expire on the dates indicated on the Invoice. Thereafter, the Subscription Period or Maintenance Period automatically renews for successive twelve (12) month periods unless Customer provides written notice of its election to not renew at least sixty (60) days in advance of the renewal date. Within the sixty (60) day period prior to the expiration of the current Subscription Period or Maintenance Period, HelpSystems shall send Customer an Invoice for the next Subscription Period or Maintenance Period. Customer's payment of the Subscription Fees or Maintenance Fees in response to an Invoice prior to the expiration date of the then-current Subscription Period or Maintenance Period will extend the Maintenance Services until the new expiration date indicated on the Invoice. If Customer fails to pay the Subscription Fees or Maintenance Fees prior to the expiration date of the then-current Subscription Period or Maintenance Period, HelpSystems may condition any subsequent reinstatement on payment of an additional fee determined in HelpSystems' sole discretion. Customer shall also be responsible for paying all Subscription Fees or Maintenance Fees associated with back Maintenance Services from the date that such Maintenance Services were stopped through the then-current date. HelpSystems may allow Customer to pay the annual Subscription Fees or Maintenance Fees by credit card via a PCI compliant third-party system and, with Customer's agreement, can annually automatically charge the Customer's credit card upon the renewal date. Subscription Fees or Maintenance Fees for each Maintenance Period are subject to change in HelpSystems' sole discretion. All Subscription Fees or Maintenance Fees are non-refundable.

7.2 The Maintenance Services specifically and expressly do not include any Professional Services. Professional Services are subject to separate Professional Services Fees to be agreed in a Statement of Work executed by the Parties.

SECTION 8. Prices and Payment.

8.1 Customer shall pay all Fees as set forth in the relevant Invoice. All Invoices shall be due and payable thirty (30) days from the Invoice date. HelpSystems may impose late charges on overdue payments at a rate equal to the lesser of one and one half percent (1.5%) per month or the highest rate legally permitted by law, calculated from the date payment was due until the date payment is made, and all reasonable expenses incurred in collection, including reasonable attorneys' fees. If Customer in good faith disputes all or a portion of an Invoice, then Customer shall inform HelpSystems within fifteen (15) days following Customer's receipt of the applicable Invoice. Following HelpSystems' receipt of Customer's written dispute, the Parties shall work together, in good faith and acting reasonably, to resolve said dispute. Promptly following resolution of such dispute, Customer shall pay any amounts determined to be owing as a result of the dispute's resolution. Notwithstanding the foregoing, Customer shall be responsible for promptly paying that portion of the Invoice not in dispute.

8.2 Customer shall be liable for payment of, and all Fees are exclusive of, all local, state, and federal sales, use and excise or other similar taxes (including withholding taxes) and custom duties that are levied upon and related to the performance of obligations and exercise of rights under this Agreement. HelpSystems may be required to collect and remit such taxes from Customer, unless Customer provides HelpSystems with a valid tax exemption certificate. HelpSystems will invoice Customer for all such taxes based on the Software and/or Services provided. In no event will either Party be liable for any taxes levied against the other Party's net income.

SECTION 9. Warranties.

9.1 HelpSystems warrants, for a period of ninety (90) days from delivery of the Software (the "Software Warranty Period"), that the Software shall substantially conform to the Software Documentation. In the event of any breach of the warranty during the Software Warranty Period as set forth in this Section 9.1, HelpSystems shall correct or replace, at no additional charge to Customer, any portion of the Software found to be defective; provided, however, that if HelpSystems cannot correct or replace the defective Software within a commercially reasonable time period, then Customer's sole and exclusive remedy shall be to receive a refund of the applicable License Fee paid to HelpSystems. HelpSystems does not warrant that the operation of the Software will be uninterrupted or error free or that the Software will meet the Customer's operational requirements. HelpSystems is not responsible for errors or defects in the Software caused by Customer's failure to comply with the requirements specified in the Software Documentation or changes in or to

the operating characteristics of the Customer's computer hardware or operating systems made after delivery of the Software or errors or defects in the Software caused by the interaction of the Software with any third party programs or applications. The warranty set forth in this Section 9.1 shall be void as to Software where noncompliance is caused or related to (a) the acts or omissions of non-HelpSystems' personnel, agents, or third parties; (b) any unauthorized alterations or modifications made to the Software by Customer, its personnel or agents; (c) use of the Software other than in the operating environment specified in the Software Documentation; or (d) coding, information, or specifications created or provided by the Customer or any third party.

9.2 HelpSystems warrants that any Professional Services provided by HelpSystems pursuant to the applicable Statement of Work shall be performed in accordance with the prevailing professional standards of the software industry. In the event of any breach of the warranty set forth in this Section 9.2, HelpSystems shall correct, at no additional charge to Customer, any portion of the Professional Services found not to meet prevailing professional standards of the software industry; provided, however, that if HelpSystems fails to correct the Professional Services found not to meet prevailing professional standards of the software industry in a commercially reasonable time period, then Customer's sole and exclusive remedy shall be to receive a refund of Professional Services Fees paid for the allegedly defective Professional Services under the applicable Statement of Work.

9.3 EXCEPT AS SET FORTH IN THIS SECTION 9, THE SOFTWARE, SOFTWARE DOCUMENTATION AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS. HELPSYSTEMS SHALL HAVE NO LIABILITY FOR THE SOFTWARE, SOFTWARE DOCUMENTATION OR ANY SERVICE PROVIDED IN FURTHERANCE OF THIS AGREEMENT; HELPSYSTEMS MAKES AND CUSTOMER RECEIVES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS AGREEMENT OR ANY OTHER COMMUNICATION; AND HELPSYSTEMS SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR THAT USE BY CUSTOMER WILL BE ERROR OR DEFECT FREE OR UNINTERRUPTED.

SECTION 10. Limitation of Liability.

10.1 HelpSystems shall not be liable for any (a) special, indirect, incidental, punitive or consequential damages, including but not limited to, loss of profits, arising from or related to a breach of this Agreement or the operation or use of the Software, Software Documentation or Services including such damages, without limitation, as damages arising from loss of data or programming, loss of revenue or profits, failure to realize savings or other benefits, damage to equipment, and claims against Customer by any third party, even if HelpSystems has been advised of the possibility of such damages; (b) damages (regardless of their nature) for any delay or failure by HelpSystems to perform its obligations under this Agreement due to any cause beyond HelpSystems' reasonable control; or (c) claims made a subject of a legal proceeding against HelpSystems more than one (1) year after any such case of action first arose.

10.2 NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, HELPSYSTEMS' AGGREGATE LIABILITY UNDER THIS AGREEMENT, WHETHER IN CONTRACT LAW, TORT LAW, WARRANTY OR OTHERWISE SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO HELPSYSTEMS IN THE PREVIOUS TWELVE (12) MONTH PERIOD UNDER THIS AGREEMENT.

SECTION 11. Termination.

11.1 If Customer purchased a perpetual license of the Software, the license commences on the date Customer acquired the license and continues until Customer ceases using the Software or the license is terminated as stated below. If Customer purchased a license for a Subscription Period, or if Customer purchased Maintenance Services separately (in the case of a perpetual license), the license and/or Maintenance Services commences on the date specified in the applicable Invoice and shall continue for the duration specified therein and shall automatically renew for further periods in accordance with Section 7.1.

11.2 Either Party can terminate the Agreement if it believes that the other Party is in breach of a material term which has not been remedied after thirty (30) days of receipt of written notice specifying the breach and requiring its remedy. HelpSystems shall also have the right to suspend Maintenance Services to Customer in these circumstances or if Customer has not paid the applicable Fees in accordance with this Agreement.

11.3 Either Party can terminate this Agreement immediately and without notice if a Party enters into compulsory or voluntary liquidation or is deemed unable to pay its debts as they fall due or convene a meeting of or enter into any composition with creditors or have an administrative receiver, receiver manager, or administrator appointed over all or some of the undertaking or assets or anything analogous to the events described occurs in any jurisdiction.

11.4 On termination or expiration of this Agreement for any reason, Customer shall make no further use of the Software and shall either return to HelpSystems or destroy originals and all copies of the Software and Software Documentation. Customer shall supply a written affidavit executed by an officer of Customer to HelpSystems certifying that it no longer possesses any embodiments of the Software or Software Documentation. No refunds or credits will be due to Customer.

SECTION 12. Nondisclosure of Confidential Information.

12.1 HelpSystems and Customer agree that the Party receiving Confidential Information (“Receiving Party”) shall exercise the same degree of care and protection with respect to the Confidential Information of the Party disclosing the Confidential Information (“Disclosing Party”) that it would exercise with respect to its own Confidential Information and shall not directly or indirectly disclose, copy, distribute, republish, or allow any third party to have access to any Confidential Information of the Disclosing Party, without the prior written consent of the Disclosing Party, except the Receiving Party may disclose Confidential Information on a need-to-know basis, to affiliates, subsidiaries, employees, agents, contractors or representatives of the Receiving Party who are informed by the Receiving Party of the confidential nature of the Confidential Information and the obligations of the Receiving Party under this Agreement or in accordance with a judicial or other governmental order, but only if the Receiving Party promptly notifies the Disclosing Party of the order and complies with any applicable protective or similar order. The Receiving Party will cause its affiliates, subsidiaries, employees, agents, contractors or representatives to comply with the provisions of this Section 12.1.

12.2 HelpSystems and Customer agree that the Receiving Party will promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information, or any other breach of this Agreement; and assist the Disclosing Party in every reasonable way to retrieve any Confidential Information that was used or disclosed by the Receiving Party or an employee, agent and representative of the Receiving Party without the Disclosing Party’s specific prior written authorization and to mitigate the harm caused by the unauthorized use or disclosure.

12.3 HelpSystems and Customer agree that the Receiving Party will not breach Section 12.1 or Section 12.2 by using or disclosing Confidential Information if the Receiving Party demonstrates that the information used or disclosed (a) is generally available to the public other than as a result of a disclosure by the Receiving Party or an employee, agent and representative of the Receiving Party; (b) was received by the Receiving Party from a third party without any limitations on use or disclosure; or (c) was independently developed by the Receiving Party without use of the Confidential Information.

12.4 HelpSystems and Customer agree that upon the request of the Disclosing Party, the Receiving Party will (a) promptly return to the Disclosing Party all materials furnished by the Disclosing Party containing Confidential Information, together with all copies and summaries of Confidential Information in the possession or under the control of the Receiving Party, and provide written certification that all such Confidential Information has been returned to the Disclosing Party, or (b) promptly destroy all materials furnished by the Disclosing Party containing Confidential Information, together with all copies and summaries of Confidential Information in the possession or under the control of the Receiving Party, and provide written certification that all such Confidential Information has been destroyed by the Receiving Party.

12.5 HelpSystems and Customer acknowledge and agree that the remedies available at law for any breach of this Agreement will, by their nature, be inadequate. Accordingly, each Party may obtain injunctive relief or other equitable relief to restrain a breach or threatened breach of this Agreement or to specifically enforce this Agreement, without proving that any monetary damages have been sustained.

SECTION 13. General Provisions.

13.1 This Agreement, together with the applicable Invoice, represents the entire agreement between the Parties on the subject matter hereof and supersedes all prior discussions, agreements and understandings of every kind and nature between the Parties. Neither Party shall be deemed the drafter of this Agreement. No modification of this Agreement shall be effective unless in

writing and signed by both Parties. All additional and conflicting terms and conditions presented with or in any communication, including but not limited to Customer's purchase orders ("P.O."), except with respect to price, quantity and location specified in a P.O., are hereby rejected and shall be deemed *null* and *void*.

13.2 Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without HelpSystems' prior written consent. HelpSystems retains the right to assign or otherwise transfer all or any of its rights under this Agreement in its discretion. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

13.3 If any provision of this Agreement is found to be illegal, invalid, or unenforceable, that provision shall not affect the validity or enforceability of this Agreement as a whole, and this Agreement shall then be construed in all respects as if such invalid or unenforceable provision was omitted.

13.4 The Parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota without regard to conflict of laws principles. Any action or proceeding seeking to enforce any provisions of, or based on any right or claim arising out of this Agreement will be brought against HelpSystems or Customer in Hennepin County Circuit Court of the State of Minnesota or, subject to applicable jurisdictional requirements in the United States District Court of the District of Minnesota, and HelpSystems and Customer consent to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to such venue